

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 7506

BILL NUMBER: HB 1501

NOTE PREPARED: Mar 28, 2005

BILL AMENDED: Mar 24, 2005

SUBJECT: Deceptive acts and Attorney General's Office.

FIRST AUTHOR: Rep. Yount

FIRST SPONSOR: Sen. Server

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) *Contractor compliance with the Telephone Privacy Act:* This bill requires a contractor that contracts with a governmental body certify that the contractor, the contractor's affiliates, and persons acting on behalf of the contractor or its affiliates have not violated the terms of the Telephone Privacy Act in the previous year, and will not violate the terms of the Telephone Privacy Act, Telephone Solicitation Act, or Automatic Dialing Act for the duration of the contract. The bill also permits the Attorney General to institute a civil action to void a contract if the contractor: (1) falsely asserts past compliance with the Telephone Privacy Act; or (2) violates the terms of the Telephone Privacy Act, Telephone Solicitation Act, or Automatic Dialing Act while the contract is in effect. This bill excludes contracts where one party is a political subdivision from compliance with the telephone privacy contracting restrictions.

Deceptive Consumer Sales: The bill also increases the amount of the civil penalty that the Attorney General may recover for a violation of the Deceptive Consumer Sales law. The bill authorizes the court to provide for the appointment of a receiver in an action brought by the Attorney General to enjoin a deceptive act. The bill also provides that the law regulating promotional gifts and contests applies to a notice of a promotion that is delivered by electronic mail or another form of electronic communication. The bill also makes other changes.

Effective Date: Upon Passage; July 1, 2005.

Explanation of State Expenditures: (Revised) *Contractor compliance with the Telephone Privacy Act:* This bill will have an indeterminable administrative cost impact on the Attorney General's Office (AG). The increase in expenditures will depend upon the number of actions initiated under the contractor compliance provisions of the bill. The possible increase in cost could be offset by the provision in the bill allowing the AG to recover

reasonable expenses for both investigation and maintaining the action.

Explanation of State Revenues: (Revised) *Contractor compliance with the Telephone Privacy Act:* This bill allows the AG to bring an action against a contractor who falsely certifies compliance with the Telephone Privacy Act (under IC 24-4.7) or has violated the Telephone Privacy Act, Telephone Solicitation Act, or Automatic Dialing Act. The bill allows the AG to seek damages (in addition to any remedy obtained in this kind of action) equal to the amount of money the contractor obtained through each telephone call made in violation of the bill. These provisions will have an indeterminable impact on the state General Fund. All the money collected by the AG through these actions would be deposited in the General Fund. It is indeterminable how many successful actions will be initiated under the bill, and also what damages will be awarded.

Deceptive Consumer Sales: This bill increases the amount of the civil penalty that the AG may recover, on behalf of the state, for a violation of the deceptive consumer sales law. Currently the maximum recovery is \$500 per violation, and this bill increases the maximum to \$5,000 per violation. The increase in revenue will ultimately depend upon the number of successful actions by the AG. The revenue from these civil penalties is deposited in the state General Fund. The violations to which this penalty attaches are listed below.

Background: Under IC 24-5-0.5-3 the following acts or representations as to the subject matter of a consumer transaction, made either orally or in writing by a supplier, are deceptive acts:

- (1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.
- (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.
- (3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.
- (4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.
- (5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.
- (6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.
- (7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction he does not have, and which the supplier knows or should reasonably know that he does not have.
- (8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.
- (9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.
- (10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know he could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that he will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

- (11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.
- (12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:
- (A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;
 - (B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);
 - (C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and
 - (D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).
- (13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:
- (A) the customer has been notified that the work has been completed; and
 - (B) the part repaired or replaced has been made available for examination upon the request of the customer.
- (14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.
- (15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:
- (A) the name misrepresents the supplier's geographic location;
 - (B) the listing fails to identify the locality and state of the supplier's business;
 - (C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and
 - (D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.
- (16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:
- (A) the name misrepresents the supplier's geographic location;
 - (B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and
 - (C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.
- (17) That the supplier violated IC 24-3-4 concerning cigarettes for import or export.
- (18) That a supplier knowingly sells or resells a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer unless the product has been repaired or modified to correct the defect that was the subject of the recall.

Under IC 24-5-0.5-10 a supplier commits a deceptive act if the supplier gives any of the following representations, orally or in writing, or does any of the following acts:

- (1) Either:

- (A) solicits to engage in a consumer transaction without a permit or other license required by law;
 - (B) solicits to engage in a consumer transaction if a permit or other license is required by law to engage in the consumer transaction and the supplier is not qualified to obtain the required permit or other license or does not intend to obtain the permit or other license; or
 - (C) engages in a consumer transaction without a permit or other license required by law.
- (2) Commits a violation of IC 24-5-10.
- (3) Contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.
- (b) A supplier commits an unconscionable act that shall be treated the same as a deceptive act under this chapter if the supplier solicits a person to enter into a contract or agreement:
- (1) that contains terms that are oppressively one sided or harsh;
 - (2) in which the terms unduly limit the person's remedies; or
 - (3) in which the price is unduly excessive;
- and there was unequal bargaining power that led the person to enter into the contract or agreement unwillingly or without knowledge of the terms of the contract or agreement. There is a rebuttable presumption that a person has knowledge of the terms of a contract or agreement if the person signs a written contract.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Attorney General.

Local Agencies Affected:

Information Sources:

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